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CITY COUNCIL
CITY AND COUNTY OF HONOLULU
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For Immediate Release

July 29, 2004

Contact: Frank Streed
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**Councilmember Okino Introduces Bill
To Provide Farmers With Tax Relief**

Bill 51 (2004), introduced today by Councilmember Gary Okino, streamlines the process for local farmers to dedicate lands for agricultural use and receive a reduction in the real property tax paid on those lands. In addition, the bill encourages owners of vacant agricultural land to lease land to farmers by repealing the existing "rollback tax" and insulating them from any penalty should land dedicated to agriculture not be used as such.

"Our local farmers have been caught between a rock and a hard spot, with the City on one side and the land owner on the other. Caught in the middle, farmers have been frustrated in attempts to dedicate their lands, and in many cases unable to secure the tax breaks that were intended to assist them," said Okino.

To directly assist the farmers, the bill provides that land dedicated for a 1-year period will be assessed at 5% of fair market value, and land dedicated for a 10-year period will be assessed at only 1% of fair market value. In addition, the requirements for applying for a dedication are reduced, and farmers themselves can be the sole applicants for dedication.

To encourage large land owners to provide more lands to local farmers, the bill eliminates the existing "roll back" tax, which has been a major impediment and disincentive to leasing lands to small farmers.

Okino further stated, "By insulating the large land owner from any type of roll back tax or penalty, their financial risk is eliminated, and should therefore enable them to readily lease their lands to farmers and ranchers at reasonable rents."

A bill description and justification sheet on Bill 51 is attached.

Bill Description and Justification

Bill No. 51 (2004)

Title: Relating to Real Property Taxation

Section Affected: Section 8-7.3 Revised Ordinances of Honolulu

Purpose: The purpose of this bill is to assist and make it easier for farmers to dedicate their lands for substantial and continuous agricultural production and therefore receive a reduction in the real property tax assessment of those lands.

To adjust the penalty provisions for an applicant who seeks and obtains an agricultural dedication, but who does not use the property so dedicated for substantial and continuous agricultural purposes.

Background: Local farmers have been frustrated in their attempts to dedicate the lands they are cultivating, and in many cases have been unable to secure the real property tax assessment breaks that were intended to assist them. This bill eliminates many of the administrative procedures or steps necessary to apply for and maintain a dedication -- streamlining and making it easier for the farmer to apply for and obtain the dedication.

In addition, this bill encourages owners of vacant agricultural land to lease land to farmers by insulating the fee landowner from any additional tax or penalty liability in those cases where the farmer who is a lessee applies for the dedication and fails to keep the dedicated property in substantial and continuous agricultural use. Any penalty, if levied, would apply only to the applicant.

Key Provisions: Significant amendments or changes to the Agricultural Dedication Law are as follows:

- **Allows** the farmer, whether as fee owner or lessee, to apply for either a 1-year dedication or a 10-year dedication. Lands subject to a 1-year dedication will be assessed for real property tax purposes at 5% of fair market value. Land subject to a 10-year dedication will be assessed for real property tax purposes at 1% of fair market value.
- **Provides** that "pasture land" dedicated for a period of 1-year or for a period of 10-years shall also be assess at a reduced but yet unstated percentage of fair market value.
- **Eliminates** certain land dedication petition application requirements.
- **Eliminates** the provision that approved land dedications must be recorded with the bureau of conveyances or the land court.

- **Eliminates** the current provision that imposes a "roll back" tax and penalty on the fee owner if land dedicated for substantial and continuous agriculture is no longer used as such.
- **Provides** that if an applicant for an approved dedication (whether that applicant is a fee owner or a lessee) is found to be not using the land for substantial and continuous agricultural use, that applicant shall be subject to a penalty of \$50.00 per acre of dedicated land. In addition, that applicant would not be permitted to petition for any other agricultural dedication for a period of 2-years.
- **Extends** the deadline for filing a petition for agricultural land dedication to enable farmers to seek and obtain a dedication and reduced assessment for the upcoming 2005-2006 tax year.

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BILL **51** (2004) _____

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RELATING TO REAL PROPERTY TAXATION.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend certain provisions of the Revised Ordinances of Honolulu 1990, as amended, relating to the dedication of agricultural lands while maintaining the existing requirement that all dedicated lands must be substantially and continuously used for the business of raising and producing agricultural products.

SECTION 2. Section 8-7.3, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"Sec. 8-7.3 Dedication of lands for agricultural use.

(a) Lands that have been dedicated by the [property] owner for a period of 1 year[, 5 years,] or 10 years for a specific agricultural use shall be classified and assessed for real property tax purposes at a percentage of the land's fair market value as established in subdivision (2) and be subject to the following:

(1) The land dedicated must be substantially and continuously used for the business of raising and producing agricultural products in their natural state.

(2) Dedicated land shall be assessed as follows:

(A) For non-pasture land dedicated for a period of 1 year, the land shall be assessed at [10] 5 percent of its fair market value.

(B) [For land dedicated for a period of 5 years, the land shall be assessed at 5 percent of its fair market value.

(C)] For non-pasture land dedicated for a period of 10 years, the land shall be assessed at 1 percent of its fair market value.

(C) For pasture land dedicated for a period of 1 year, the land shall be assessed at _____ percent of its fair market value.

(D) For pasture land dedicated for a period of 10 years, the land shall be assessed at _____ percent of its fair market value.



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~~[(D)]~~(E) That portion of dedicated land that is not used for a specific agricultural use shall be assessed at 100 percent of its fair market value.

- (3) The land dedicated shall be substantially and continuously in a use specified under subdivision (1) for the duration of the dedication period.
- (b) If any owner desires to dedicate said person's land for a specific agricultural use and to have the owner's land assessed for real property tax purposes at the applicable percentage of the land's fair market value, the owner shall so petition the director and declare in the owner's petition that if the owner's petition is approved the owner will use the owner's land for this specific agricultural purpose. The petition shall be accompanied by an agricultural plan which may include:
- (1) A description of the specific agricultural use;
 - (2) A tax map identification of the owner's land;
 - ~~[(3)]~~ A description of the total acreage of the land;
 - ~~(4)]~~(3) A description of the acreage to be utilized for the specific agricultural use;
and
 - ~~[(5)]~~ A timetable for implementation of the plan; and
 - ~~(6)]~~(4) A copy of a valid State of Hawaii general excise tax license.

The director shall prescribe the form of the agricultural plan.

- (c) Upon receipt of a petition as provided in subsection (b), the director shall make a finding of fact as to whether the land in the petition area is reasonably well suited for the designated specific agricultural use. The finding shall include and be based upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of operating unit, the present use of surrounding similar lands and other criteria as may be appropriate. The director shall also make a finding of fact as to whether the designated specific agricultural use conforms to the development plan for the area. The director shall also make a finding of fact as to the economic feasibility of the designated specific agricultural use of the land. If all three findings are favorable, the director shall approve the petition and declare the land to be dedicated for the designated



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specific agricultural use. [For 5- and 10-year dedications, in order to place prospective buyers on notice of the dedication, the petitioner shall within 30 days of notice of approval record the dedication in accordance with the procedures of the bureau of conveyances and/or the land court, as is appropriate. Upon the expiration of the dedication and receipt of the notice of cancellation from the director, the owner shall record the notice of cancellation with the bureau of conveyances and/or the land court, as is appropriate.]

- (d) The approval by the director of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of the owner's land to a use other than agricultural for a minimum period of 1 year[, 5 years,] or 10 years, as the case may be.
- (e) The director shall prescribe the form of the petition. The petition shall be filed with the director by September 1st of any calendar year and shall be approved or disapproved by October 31. If approved, the assessment based upon the use requested in the dedication shall be effective on July 1st of the following tax year.
- (f) The owner may appeal any disapproved petition as in the case of an appeal from assessment.
- (g) The owner of any parcel of land dedicated for a specific agricultural use shall, annually, no later than September 1st following each tax year of the dedication, submit a report to the director which may include but not be limited to:
 - (1) An updated description of the agricultural use of the land during the immediately preceding and current tax years;
 - (2) A copy of all state general excise tax returns for the immediately preceding tax year concerning activities conducted on the parcel of land dedicated for a specific agricultural use;
 - (3) A description of the acreage and percentage of the area of the parcel of land utilized for the specified agricultural use during the immediately preceding and current tax years; and
 - (4) A declaration, if applicable, that the owner will keep the land in substantial and continuous agricultural use through the remaining period of the dedication.



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Any part of the report containing confidential commercial or financial information, including income statements or tax statements, shall be clearly [labelled] labeled by the owner as such and shall not be open to inspection by the public.

The director shall prescribe the form of the report. The report may be rejected by the director in the event the report is incomplete or contains erroneous or incorrect information. The report shall be accepted or rejected by the director by October 31 of the year in which it is submitted.

- (h) If land dedicated for agricultural use undergoes a change in land use classification which is not a result of a petition by any [property] owner or lessee such that the owner's land which was initially classified in the agricultural or preservation zoning district is placed within a zoning district other than agricultural or preservation, the dedication shall continue unless the owner files a written notice of cancellation with the director within 60 days of the change. Such cancellation shall be effective on the next July 1st which is at least nine months after the filing.
- [(i)] In the event that a dedication is cancelled or expires, the director shall execute and record an expiration or cancellation of the dedication. Any required fees and charges associated with the recordation shall be charged to the property owner.
- (j)](i) In the event the director, upon inspection, finds that dedicated agricultural land is not in substantial and continuous agricultural use, that the [property] owner who applied for the dedication failed to file the required report in a timely manner, or that the required report must be rejected, [the] such owner shall be notified of the finding and [the] such owner shall have 60 days to address the finding. In the event the owner who applied for the dedication fails to satisfactorily address the finding, the dedication shall be canceled and [the property] such owner shall be subject to a [rollback tax and] penalty. [The rollback tax shall be the difference between the taxes owed for the land at 100 percent of the land's assessed value at the fair market value and the taxes actually imposed on the land, retroactive to the date of the dedication.] The penalty shall be [10 percent of the rollback tax per annum.] \$50.00 per acre of dedicated land. [The rollback tax and penalty shall be a paramount lien upon the property.] Additionally, if the owner who applied for the dedication fails to satisfactorily address the finding, such owner may not petition for any dedication for any agricultural land for a period of 2 years.



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[(k)](i) The owner who applied for the dedication may appeal any rejection of the report, cancellation of the dedication, or imposition of a [rollback tax and] penalty in the same manner as an appeal from an assessment.

[(l)](k) Notwithstanding any provision in this section to the contrary, the occurrence of any of the following events shall cause the dedication to be canceled without the imposition of any [rollback taxes or] penalties whatsoever.

- (1) The death of any owner; or
- (2) Events beyond the owner's control make it unfeasible to continue the agricultural use of the dedicated property, including, but not limited to:
 - (A) A serious or debilitating long-term illness or injury suffered by the owner;
 - (B) A natural disaster such as a windstorm, flood, disease, or infestation that destroys the crop or livestock on the dedicated parcel; or
 - (C) The taking of the dedicated parcel or any portion thereof by a governmental entity, provided that where only a portion of the parcel is taken, the cancellation shall be effective only as to the portion taken.

[(m)](l) Notwithstanding any provisions in this section to the contrary, for [5- and] a 10-year [dedications] dedication, the director may grant an owner a grace period which may be granted subject to the following conditions:

- (1) A grace period may be granted only if one of the following events occurs:
 - (A) A bank or other lending institution acquires possession of a property as a result of a default of a mortgage on the property; or
 - (B) The agricultural use of a dedicated parcel is terminated because a lessee has abandoned or terminated a lease prior to the end of the term of the lease, the owner of the parcel has not found another lessee, and the lease has a term of five years or longer.
- (2) During the grace period, the owner is not required to use the land for the business of raising and producing agricultural products.



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- (3) At the end of the grace period, the owner shall use the land for the business of raising and producing agricultural products for the entire remaining period of the owner's dedication. The grace period shall not be counted in determining the owner's compliance with the dedication.
- (4) The grace period shall not exceed two years.
- (5) During the grace period, the land shall be assessed at 100 percent of market value.
- (6) No grace period shall be granted for a parcel of land within 5 years following the expiration of a previous grace period.

[(n)](m) As used in this section:

"Agricultural products" include floricultural, horticultural, viticultural, aquacultural, forestry, nut, coffee, dairy, livestock, poultry, bee, animal, tree farm, animals raised by [grazing and] pasturing, and any other farm, agronomic, or plantation products.

"Livestock" means beef and dairy cattle, sheep, goats, swine, and any other animal used commercially for human food or kept for the production of food or fiber.

["Owner"] For 1-year dedications, "owner" includes a lessee of real property [whose lease term extends at least through the time period of the dedication from the date of the petition].

For 10-year dedications, "owner" includes a lessee of real property whose lease term extends at least through the time period of the dedication.

"Pasture land" means land devoted to a perennial forage crop used and suitable for grazing of livestock and horses.

"Substantial and continuous agricultural use" means no less than 75 percent of the area of the dedicated land is in active, continuous and revenue-generating agricultural use throughout the subject time period. For lands dedicated for a period of 5 years or 10 years, substantial and continuous agricultural use shall include necessary and customary fallowing periods.

"Tree farm property" and "tree farm" mean land classified as tree farm property under HRS Chapter 186."



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SECTION 3. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed materials or the underscoring.

SECTION 4. Any other law notwithstanding, for the tax year 2005-2006 only, a petition may be filed with the director by November 1, 2004 and shall be approved or disapproved by the director of budget and fiscal services by November 30, 2004.



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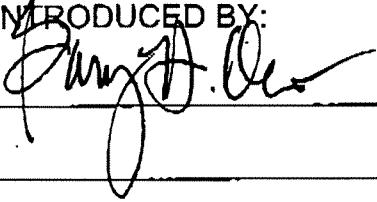
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SECTION 5. This ordinance shall take effect upon its approval.

INTRODUCED BY:



DATE OF INTRODUCTION:

JUL 29 2004
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 2004.

JEREMY HARRIS, Mayor
City and County of Honolulu

(OCS/072704/ct)